

1 BARBARA J. PARKER, City Attorney - SBN 069722
OTIS McGEE, Jr., Chief Assistant City Attorney - SBN 71885
2 DAVID PEREDA, Supervising Deputy City Attorney - SBN 237982
One Frank H. Ogawa Plaza, 6th Floor
3 Oakland, California 94612
Phone: (510) 238-4921 (Pereda), Fax: (510) 238-6500
4 Email: dpereda@oaklandcityattorney.org

5 Attorneys for Defendant
CITY OF OAKLAND
6
7

8 **UNITED STATES DISTRICT COURT**
9 **NORTHERN DISTRICT OF CALIFORNIA**
10
11

12 ALLENE HUTCHINSON, et al.,
13 Plaintiffs,
14 v.
15 THE CITY OF OAKLAND, et al.
16 Defendants.
17

Case No. 15-cv-05011 RS
**CITY OF OAKLAND'S ANSWER TO
COMPLAINT**

INTRODUCTION

1. The City of Oakland expresses its sincere condolences to Demouria Hogg's family. The City maintains that that its officers' actions during the subject incident were in line with the United States Constitution and with state law.

PARTIES

2. The City lacks sufficient knowledge or information to form a belief as to the truth of the second paragraph's allegations.

3. The City lacks sufficient knowledge or information to form a belief as to the truth of the third paragraph's allegations.

4. The City lacks sufficient knowledge or information to form a belief as to the truth of the fourth paragraph's allegations.

5. The City admits that it is a municipal corporation and that the Oakland Police Department is a department within the City. Given that the DOE officers are not yet identified in the complaint, the City lacks sufficient knowledge or information to form a belief as to the truth of the allegation that "At all relevant times, Defendant CITY was the employer of DOES Defendants, individually and as peace officers."

6. Given that the DOE officers are not yet identified in the complaint, the City lacks sufficient knowledge or information to form a belief as to the truth of the sixth paragraph's allegations. But the City does not anticipate that it will dispute that during the subject incident, its officers were acting under color of law and within the course or scope of their employment as police officers.

7. The City's officers who responded to the subject incident were duly sworn police officers whom the City employed.

8. The City's officers who responded to the subject incident were duly sworn police officers whom the City employed. The City does not anticipate that it will dispute that

its officers were acting under color of law and within the course or scope of their employment as police officers. The City denies that its officers violated the United States Constitution or state law in any way during the subject incident.

9. The City's officers who responded to the subject incident were duly sworn police officers whom the City employed; these officers were subject to the City's policies that apply to police officers.

10. The City's officers who responded to the subject incident were duly sworn police officers whom the City employed.

11. The City lacks sufficient knowledge or information to form a belief as to the truth of the eleventh paragraph's allegations.

12. The City admits that on or about July 7, 2015, Plaintiffs presented a timely claim as to the matters set forth on Plaintiffs' claim form. That claim number is C30713.

13. The City denied claim number C30713.

JURISDICTION

14. The City admits that jurisdiction is proper.

15. The City admits that venue is proper.

FACTS COMMON TO ALL CAUSES OF ACTION

16. The City incorporates by reference its responses to Paragraphs 1 through 15.

17. The City admits that the subject incident took place on June 6, 2015, "in or around the area of the Lakeshore off-ramp of the Westbound High 580, in the City of Oakland, California." The City denies the seventeenth paragraph's remaining allegations.

18. The City denies the eighteenth paragraph's allegations.

19. The City denies the nineteenth paragraph's allegations.

20. The City denies the twentieth paragraph's allegations.

1 || 21. The City denies the twenty-first paragraph's allegations.

2 22. The City denies the twenty-second paragraph's allegations.

3 23. The City denies the twenty-third paragraph's allegations.

24. The City admits that officers used their duty weapons, including a taser and a handgun. The City denies the twenty-fourth paragraph's remaining allegations.

6 25. The City denies the twenty-fifth paragraph's allegations.

7 26. The City lacks sufficient knowledge or information to form a belief as to the
8 truth of the twenty-sixth paragraph's allegations.

9 27. The City lacks sufficient knowledge or information to form a belief as to the
10 truth of the twenty-seventh paragraph's allegations.

11

12 FIRST CAUSE OF ACTION

13 28. The City incorporates by reference its responses to Paragraphs 1 through 27.

14 29. The City denies the twenty-ninth paragraph's allegations.

15 30. The City denies the thirtieth paragraph's allegations.

16 31. The City denies the thirty-first paragraph's allegations.

17 32. The City denies the thirty-second paragraph's allegations.

33. The City lacks sufficient knowledge or information to form a belief as to the truth of the thirty-third paragraph's allegations.

20 34. The City lacks sufficient knowledge or information to form a belief as to the
21 truth of the thirty-fourth paragraph's allegations.

22

23 SECOND CAUSE OF ACTION

24 35. The City incorporates by reference its responses to Paragraphs 1 through 34.

25 36. The City denies the thirty-sixth paragraph's allegations.

26 37. The City denies the thirty-seventh paragraph's allegations.

1 38. The City denies the thirty-eighth paragraph's allegations.

2 39. The City denies the thirty-ninth paragraph's allegations.

3 40. The City denies the fortieth paragraph's allegations.

4 41. The City denies the forty-first paragraph's allegations.

5 42. The City denies the forty-second paragraph's allegations.

6 43. The City lacks sufficient knowledge or information to form a belief as to the
7 truth of the forty-third paragraph's allegations.

8 44. The City lacks sufficient knowledge or information to form a belief as to the
9 truth of the forty-fourth paragraph's allegations.

10

11

THIRD CAUSE OF ACTION

12 45. The City incorporates by reference its responses to Paragraphs 1 through 44.

13 46. The City lacks sufficient knowledge or information to form a belief as to the
14 truth of the forty-sixth paragraph's allegations.

15 47. The City lacks sufficient knowledge or information to form a belief as to the
16 truth of the forty-seventh paragraph's allegations.

17 48. The City denies the forty-eighth paragraph's allegations.

18 49. The City denies the forty-ninth paragraph's allegations.

19 50. The City denies the fiftieth paragraph's allegations.

20 51. The City denies the fifty-first paragraph's allegations.

21 52. The City denies the fifty-second paragraph's allegations.

22 53. The City lacks sufficient knowledge or information to form a belief as to the
23 truth of the fifty-third paragraph's allegations.

24 54. The City lacks sufficient knowledge or information to form a belief as to the
25 truth of the fifty-fourth paragraph's allegations.

26 ///

FOURTH CAUSE OF ACTION

55. The City incorporates by reference its responses to Paragraphs 1 through 54.

56. The City lacks sufficient knowledge or information to form a belief as to the truth of the fifty-sixth paragraph's allegations.

57. The City denies the fifty-seventh paragraph's allegations.

58. The City denies the fifty-eighth paragraph's allegations.

59. The City denies the fifty-ninth paragraph's allegations.

60. The City denies the sixtieth paragraph's allegations.

61. The City denies the sixty-first paragraph's allegations.

62. The City lacks sufficient knowledge or information to form a belief as to the truth of the sixty-second paragraph's allegations.

FIFTH CAUSE OF ACTION

63. The City incorporates by reference its responses to Paragraphs 1 through 62.

64. The City lacks sufficient knowledge or information to form a belief as to the truth of the sixty-fourth paragraph's allegations.

65. The City lacks sufficient knowledge or information to form a belief as to the truth of the sixty-fifth paragraph's allegations.

66. The City denies the sixty-sixth paragraph's allegations.

67. The City denies the sixty-seventh paragraph's allegations.

68. The City denies the sixty-eighth paragraph's allegations.

69. The City denies the sixty-ninth paragraph's allegations.

70. The City denies the seventieth paragraph's allegations.

71. The City denies the seventh-first paragraph's allegations.

72. The City denies the seventy-second paragraph's allegations.

73. The City denies the seventy-third paragraph's allegations.

1 74. The City lacks sufficient knowledge or information to form a belief as to the
2 truth of the seventy-fourth paragraph's allegations.

3 75. The City lacks sufficient knowledge or information to form a belief as to the
4 truth of the seventy-fifth paragraph's allegations.

5
6 **SIXTH CAUSE OF ACTION**

7 76. The City incorporates by reference its responses to Paragraphs 1 through 75.

8 77. The City denies the seventy-seventh paragraph's allegations.

9 78. The City lacks sufficient knowledge or information to form a belief as to the
10 truth of the seventy-eighth paragraph's allegations.

11 79. The City denies the seventy-ninth paragraph's allegations.

12 80. The City lacks sufficient knowledge or information to form a belief as to the
13 truth of the eightieth paragraph's allegations.

14 81. The City denies the eighty-first paragraph's allegations.

15 82. The City lacks sufficient knowledge or information to form a belief as to the
16 truth of the eighty-second paragraph's allegations.

17 83. The City lacks sufficient knowledge or information to form a belief as to the
18 truth of the eighty-third paragraph's allegations.

19 84. The City lacks sufficient knowledge or information to form a belief as to the
20 truth of the eighty-fourth paragraph's allegations.

21
22 **SEVENTH CAUSE OF ACTION**

23 85. The City incorporates by reference its responses to Paragraphs 1 through 84.

24 86. The City denies the eighty-sixth paragraph's allegations.

25 87. The City denies the eighty-seventh paragraph's allegations.

26 88. The City denies the eighty-eighth paragraph's allegations.

89. The City denies the eighty-ninth paragraph's allegations.

90. The City lacks sufficient knowledge or information to form a belief as to the truth of the ninetieth paragraph's allegations.

91. The City lacks sufficient knowledge or information to form a belief as to the truth of the ninety-first paragraph's allegations.

92. The City lacks sufficient knowledge or information to form a belief as to the truth of the ninety-second paragraph's allegations.

EIGHTH CAUSE OF ACTION

93. The City incorporates by reference its responses to Paragraphs 1 through 92.

94. The City denies the ninety-fourth paragraph's allegations.

95. The City denies the ninety-fifth paragraph's allegations.

96. The City denies the ninety-sixth paragraph's allegations.

97. The City lacks sufficient knowledge or information to form a belief as to the truth of the ninety-seventh paragraph's allegations.

98. The City lacks sufficient knowledge or information to form a belief as to the truth of the ninety-eighth paragraph's allegations.

99. The City lacks sufficient knowledge or information to form a belief as to the truth of the ninety-ninth paragraph's allegations.

AFFIRMATIVE DEFENSES

As separate and distinct affirmative defenses to the Complaint, and each cause of action asserted in it, the City states as follows:

First Affirmative Defense (Standing): Plaintiffs are not real parties in interest and lack standing to sue the City.

Second Affirmative Defense (Failure to State Claim): The Complaint, and each

1 purported cause of cause of action asserted in it, fails to state facts sufficient to constitute a
2 claim upon which relief can be granted.

3 **Third Affirmative Defense (Qualified/Absolute Immunity):** The doctrines of
4 qualified and/or absolute immunity bar each of Plaintiffs' federal claims.

5 **Fourth Affirmative Defense (Discretionary Immunity):** Plaintiffs' action is barred
6 because the alleged wrongful acts and omissions are based on the exercise of a discretionary
7 duty or discretionary function on the part of the public defendants. Accordingly, the City is
8 immunized from liability as a matter of law.

9 **Fifth Affirmative Defense (Statute of Limitations):** The causes of action in the
10 Complaint are barred by the applicable statutes of limitation, including Government Code
11 section 945.6 and California Code of Civil Procedure section 335.1.

12 **Sixth Affirmative Defense (Tort Claims Act):** The causes of action in the Complaint
13 are barred because Plaintiffs failed to present a timely claim in accordance with the
14 Government Claims Act.

15 **Seventh Affirmative Defense (Comparative Negligence):** Plaintiffs' decedents'
16 negligence contributed to and was the proximate cause of Plaintiffs' injuries and damages.

17 **Eighth Affirmative Defense (Privilege, Justification):** The officers' conduct was
18 privileged and/or justified under applicable law.

19 **Ninth Affirmative Defense (Statutory Immunity):** The City and its employees are
20 immune from all liability pursuant to Government Code Sections 815(b); 815.2(b); 815.4;
21 818.4; 818.6, 818.7; 818.8; 820(b); 820.2; 820.4; 820.6; 820.8; 821; 821.2; 821.4; 821.6;
22 821.8; 822; 822.2; 830.2; 830.4; 830.6; 830.8; 830.9; 831; 831.2; 831.25; 831.3; 831.4; 831.5;
23 831.6; 831.7; 831.8; 835.4; 840.6; 844.6; 845; 845.2; 845.4; 845.6; 845.8; 846; 850; 850.2;
24 850.4; 854.8; 855; 855.2; 855.4; 855.6; 855.8; 856; 856.2; 856.4; California Vehicle Code
25 sections 16004 and 17004.7; California Penal Code sections 142, 148, 409, 834a, 834, 835,
26 835a, 836, 844, 845, 847, 849, 1531 and 1532; California Welfare and Institutions Code

sections 5150, 5113, 5153, 5154, 5173; and Civil Code section 43.5 and related provisions of these code sections and interpretative case law.

Tenth Affirmative Defense (Self Defense and Defense of Others): Any alleged use of force was the lawful exercise of the right of self-defense and defense of public and privileged and/or justified by law.

ADDITIONAL AFFIRMATIVE DEFENSES

The City presently has insufficient knowledge or information on which to form a belief as to whether it may have additional, as yet unstated, defenses available. The City reserves the right to assert additional defenses in the event that discovery indicates that they are appropriate.


PRAYER

WHEREFORE, the City prays that:

1. Plaintiffs take nothing by their Complaint;
2. The City has judgment against Plaintiffs;
3. The City be awarded its costs of suit; and
4. For such other and further relief as the Court may deem proper.

Dated: January 19, 2016

BARBARA J. PARKER, City Attorney
OTIS McGEE, Jr., Chief Assistant City Attorney
DAVID PEREDA, Supervising Deputy City Attorney

By: 
Attorneys for Defendant,
CITY OF OAKLAND